

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USCA Docket Number:

USDC Docket Number : 04-cv-12225

Dominion Energy Brayton Point, LLC,

v.


Stephen L. Johnson

CLERK'S CERTIFICATE

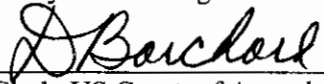
I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 8/10/05.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on August 12, 2005.

Sarah A Thornton, Clerk of Court

By: 
Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 8/12/05


Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-12225-RCL**

US Gen New England, Inc. v. Leavitt et al
Assigned to: Judge Reginald C. Lindsay
Cause: 33:1365 Environmental Matters

Date Filed: 10/22/2004
Jury Demand: None
Nature of Suit: 893
Environmental Matters
Jurisdiction: U.S. Government
Defendant

Plaintiff

US Gen New England, Inc. represented by **John M. Stevens, Jr.**
TERMINATED: 01/20/2005

Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600
617-832-1159
Fax: 617-832-7000
Email:
jstevens@foleyhoag.com
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Randall E. Kromm
Foley Hoag LLP
World Trade Center - West
155 Seaport Boulevard
Boston, MA 02210-2600
617-832-1710
Fax: 617-832-7000
Email:
rkromm@foleyhoag.com
LEAD ATTORNEY

*ATTORNEY TO BE
NOTICED*

Wendy B. Jacobs
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210-2600
617-832-1000
Fax: 617-832-7000
Email:
wjacobs@foleyhoag.com
*LEAD ATTORNEY
ATTORNEY TO BE
NOTICED*

Plaintiff

**Dominion Energy Brayton
Point, LLC** represented by **John M. Stevens, Jr.**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE
NOTICED*

Randall E. Kromm
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE
NOTICED*

Wendy B. Jacobs
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE
NOTICED*

V.

Defendant

Michael O. Leavitt represented by **Heather Gange**

*Administrator, United States
Environmental Protection
Agency*

U.S. Department of Justice,
ENRD, EDS
P.O. Box 23986
601 D Street, N.W.
Washington, DC 20026-3986
202-514-4206
Fax: 202-616-0013
Email:
heather.gange@usdoj.gov
*ATTORNEY TO BE
NOTICED*

Defendant


**United States
Environmental Protection
Agency**

represented by **Heather Gange**
(See above for address)
*ATTORNEY TO BE
NOTICED*

Defendant

**United States
Environmental Protection
Agency Region 1**

represented by **Heather Gange**
(See above for address)
*ATTORNEY TO BE
NOTICED*

Date Filed	#	Docket Text
10/22/2004	 1	COMPLAINT against Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1 Filing fee: \$ 150, receipt number 59539, filed by US Gen New England, Inc.. (Attachments: # 1 Civil Cover Sheet)(Stanhope, Don) (Entered: 10/25/2004)
10/22/2004	●	Summons Issued as to Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Stanhope, Don) (Entered: 10/25/2004)

10/22/2004	●	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Alexander. (Stanhope, Don) (Entered: 10/25/2004)
10/22/2004	●2	CORPORATE DISCLOSURE STATEMENT by US Gen New England, Inc.. (Stanhope, Don) (Entered: 10/25/2004)
10/26/2004	●3	SUMMONS Returned Executed by US Gen New England, Inc.. Michael O. Leavitt served on 10/22/2004, answer due 12/21/2004; United States Environmental Protection Agency served on 10/22/2004, answer due 12/21/2004; United States Environmental Protection Agency Region 1 served on 10/22/2004, answer due 12/21/2004. (Stanhope, Don) (Entered: 10/27/2004)
11/29/2004	●4	NOTICE of Appearance by Heather Gange on behalf of all defendants (Gange, Heather) (Entered: 11/29/2004)
12/16/2004	●5	Assented to MOTION for Extension of Time to December 27, 2004 to File Answer re <u>1</u> Complaint, by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1.(Gange, Heather) (Entered: 12/16/2004)
12/16/2004	●6	MEMORANDUM in Support re <u>5</u> Assented to MOTION for Extension of Time to December 27, 2004 to File Answer re <u>1</u> Complaint, filed by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Gange, Heather) (Entered: 12/16/2004)
12/17/2004	●	Judge Reginald C. Lindsay : Electronic ORDER entered granting <u>5</u> Assented to Motion for Extension of Time to Answer Complaint Michael O. Leavitt,

		United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Stanhope, Don) (Entered: 12/17/2004)
12/27/2004	<u>7</u>	MOTION to Dismiss by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Gange, Heather) (Entered: 12/27/2004)
12/27/2004	<u>8</u>	MEMORANDUM in Support re <u>7</u> MOTION to Dismiss filed by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Attachments: # <u>1</u>)(Gange, Heather) (Entered: 12/27/2004)
01/10/2005	<u>9</u>	Assented to MOTION for Extension of Time to January 12, 2005 to File Opposition To Defendants' Motion To Dismiss <i>with attached Certificate Of Service</i> by US Gen New England, Inc..(Stevens, John) (Entered: 01/10/2005)
01/11/2005		Judge Reginald C. Lindsay : ElectronicORDER entered granting <u>9</u> Motion for Extension of Time to File Opposition to Defendants' Motion to Dismiss to 1/12/05 (Hourihan, Lisa) (Entered: 01/11/2005)
01/12/2005	<u>10</u>	MOTION to Substitute Party (<i>Unopposed Motion to Substitute Dominion Energy Brayton Point, LLC for USGen New England, Inc.</i>) <i>with attached Certificate Of Service</i> by US Gen New England, Inc..(Stevens, John) (Entered: 01/12/2005)
01/12/2005	<u>11</u>	CORPORATE DISCLOSURE STATEMENT by Dominion Energy Brayton Point, LLC. (Stevens, John) (Entered: 01/12/2005)
01/12/2005	<u>12</u>	Opposition re <u>7</u> MOTION to Dismiss <i>with attached Certificate Of Service</i> filed by Dominion Energy Brayton Point, LLC. (Attachments: # <u>1</u> Exhibit A) (Stevens, John) (Entered: 01/12/2005)

01/20/2005	•	Judge Reginald C. Lindsay : Electronic ORDER entered granting <u>10</u> Unopposed Motion to Substitute Party. US Gen New England, Inc. terminated (Stanhope, Don) (Entered: 01/20/2005)
01/25/2005	• <u>13</u>	MOTION for Leave to File <i>Reply Memorandum in Support of Motion to Dismiss</i> by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1.(Gange, Heather) (Entered: 01/25/2005)
01/25/2005	• <u>14</u>	MEMORANDUM in Support re <u>13</u> MOTION for Leave to File <i>Reply Memorandum in Support of Motion to Dismiss</i> filed by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Attachments: # <u>1</u>)(Gange, Heather) (Entered: 01/25/2005)
01/28/2005	• <u>15</u>	RESPONSE to Motion re <u>13</u> MOTION for Leave to File <i>Reply Memorandum in Support of Motion to Dismiss with attached Certificate Of Service</i> filed by Dominion Energy Brayton Point, LLC. (Stevens, John) (Entered: 01/28/2005)
03/04/2005	•	Judge Reginald C. Lindsay : Electronic ORDER entered granting <u>13</u> Motion for Leave to File Reply Memorandum in Support of Motion to Dismiss; however the Court will not permit the filing of a Sur-Reply. (Stanhope, Don) (Entered: 03/10/2005)
03/18/2005	• <u>16</u>	REPLY to Response to Motion re <u>7</u> MOTION to Dismiss filed by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Gange, Heather) (Entered: 03/18/2005)
03/23/2005	•	NOTICE of Hearing on Motion <u>7</u> MOTION to Dismiss: Motion Hearing set for 5/2/2005 03:00 PM in Courtroom 11 before Judge Reginald C. Lindsay.

		(Hourihan, Lisa) (Entered: 03/23/2005)
03/30/2005	<u>17</u>	Assented to MOTION to Amend Notice of Hearing on Motion by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Attachments: # <u>1</u>)(Gange, Heather) (Entered: 03/30/2005)
03/30/2005	<u>18</u>	MEMORANDUM in Support re <u>17</u> Assented to MOTION to Amend Notice of Hearing on Motion filed by Michael O. Leavitt, United States Environmental Protection Agency, United States Environmental Protection Agency Region 1. (Gange, Heather) (Entered: 03/30/2005)
04/25/2005	•	Judge Reginald C. Lindsay : Electronic ORDER entered granting <u>17</u> Motion to Amend Argument Date Regarding Defendants' Motion to Dismiss (Hourihan, Lisa) (Entered: 04/25/2005)
04/25/2005	•	Set/Reset Deadlines as to <u>7</u> MOTION to Dismiss. Motion Hearing reset for 6/13/2005 03:00 PM in Courtroom 11 before Judge Reginald C. Lindsay. (Hourihan, Lisa) (Entered: 04/25/2005)
06/13/2005	•	Judge Reginald C. Lindsay : Electronic ORDER entered granting <u>7</u> Defendant's Motion to Dismiss. Motion granted because the court is without subject matter jurisdiction. As stated on the record at the hearing, this suit is in effect a direct challenge to EPA's hearing rule. Accordingly, this court does not have subject matter jurisdiction; jurisdiction exclusively lies in the court of appeals pursuant to section 509(b)(1)(E) of the Clean Water Act. The clerk shall enter judgment in favor of the defendant dismissing this action. (RCL, law3) (Entered: 06/13/2005)
06/13/2005	•	Electronic Clerk's Notes for proceedings held before

		Judge Reginald C. Lindsay : Motion Hearing held on 6/13/2005 re <u>7</u> MOTION to Dismiss filed by United States Environmental Protection Agency,, Michael O. Leavitt,, United States Environmental Protection Agency Region 1,. Arguments. Motion Allowed for reasons stated on the record. (Court Reporter N. Eaton.) (Hourihan, Lisa) (Entered: 06/14/2005)
06/14/2005	<u>19</u>	Judge Reginald C. Lindsay : ORDER entered. JUDGMENT in favor of defendants against plaintiff (Hourihan, Lisa) (Entered: 06/14/2005)
07/05/2005	<u>20</u>	TRANSCRIPT of Motion Hearing held on June 13, 2005 before Judge Lindsay. Court Reporter: Nancy L. Eaton. The original transcripts are maintained in the case file in the Clerk's Office. Copies may be obtained by contacting the court reporter at 617/633-5178 or the Clerk's Office. (Scalfani, Deborah) (Entered: 07/06/2005)
08/12/2005	<u>21</u>	NOTICE OF APPEAL by Dominion Energy Brayton Point, LLC. \$ 255, receipt number 66171 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 9/1/2005. (York, Steve) (Entered: 08/12/2005)